



City of Carmel

Carmel Board of Zoning Appeals Regular Meeting Monday, October 23, 2006

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 6:00 PM on Monday, October 23, 2006, in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were Kent Broach, Leo Dierckman, James Hawkins and Madeleine Torres, thereby establishing a quorum. Angie Conn and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mrs. Torres moved to approve the minutes of the September 25, 2006 meeting as submitted. The motion was seconded by Mr. Dierckman and **APPROVED 4-0.**

Mrs. Conn pointed out the regular December BZA meeting would fall on December 25, 2006. The meeting could either be canceled or moved to another date. A recommended date would be Monday, December 18, 2006. They also needed to take into consideration the Carmel School holiday break will be December 25, 2006 through January 5, 2007. The Board decided in favor of the Monday, December 18, 2006 date.

Mr. Molitor gave the Legal Report. The Board met in Executive Session at 5:00 PM in the Department of Community Services Conference Room to discuss pending litigation.

H. Public Hearing:

1-3h. Cingular Wireless Communications Tower

The applicant seeks the following special exception and development standards variance approvals:

Docket No. 06040014 SE	Chapter 20H.02	Special Exception Uses
Docket No. 06040015 V	Chapter 25.13.1.B.i	Distance from Residential Property
Docket No. 06050009 V	Chapter 25.13.01.3	Tower landscape requirements

The site is located at Brookshire Golf Course, northwest of 116th St. and Gray Rd.

The property is zoned P-1/Parks & Recreation.

Filed by Jim Buddenbaum of Parr Richey Obremskey & Morton for Cingular.

Mr. Dierckman recused himself.

A representative did not come forward for the Petition.

Mr. Hawkins stated the Board had received a letter from the Petitioner asking the Petition be tabled.

Mrs. Conn thought a representative was going to be present to basically repeat the request that was in the letter, to be tabled for up to one year. If the Board wished, they could withdraw the petition from the agenda. If Cingular was ever ready to bring the petition back before the Board, they would need to get a new docket number and do a new public notice to the property owners.

Mr. Hawkins stated his preference was to withdraw the petition and allow them to go back through the process to make sure everyone was notified.

Mr. Molitor stated the Board did have the written request asking to be tabled and he thought they would be present. Apparently they felt the request in writing was adequate. The difference between dismissing the case for failure to prosecute and granting the tabling request would be the filing fees. If the request was granted, they would not have to pay more filing fees. They have agreed to make all the public notices next year, if the request was granted. It was up to the Board to grant this request to table.

Mr. Broach agreed that the Board should dismiss for lack of prosecution. He did not feel the Board would want to set a precedent for tabling items for one year.

Mr. Hawkins moved to withdraw **Docket Nos. 06040014 SE, 06040015 V and 06050009 V, Cingular Wireless Communications Tower**. The motion was seconded by Mrs. Torres and **APPROVED 3-0**.

Mr. Dierckman returned to the meeting.

4-5h. Lubavitch of Indiana Worship Center

The applicant seeks approval for the following special use & development standards variance approvals:

Docket No. 06050007 SU Chapter 5.02 Special Uses

Docket No. 06050008 V Chapter 5.04.03.E.2 Minimum Lot Width

The site is located at 2640 W 96th Street and is zoned S-1/Residence.

Filed by Dave Coots of Coots, Henke & Wheeler, P.C.

Present for the Petitioner: Dave Coots, Coots, Henke & Wheeler, 255 E. Carmel Drive, Carmel. This item was heard at the August 28, 2006 BZA meeting and the Public Hearing was held open for failure to post the Public Notice sign on site. They reappeared at the September 25, 2006 meeting and were tabled by reason of the bare quorum. He gave a brief overview of the petition and the September 12 meeting held with the neighbors. There were additional items he wanted to share with the Board. An aerial site photo was shown. They border College Park Baptist Church on the east and a number of homes in Shelborne Greene on the west. They are separated from Shelborne Greene by a 25-foot common area that is part of the Declaration of Covenants of Shelborne Greene. Adjacent to that is a 25-foot drainage and utility easement that encumbers the backyards of the lots along Shelborne Greene. They were asking for a Special Use to permit the construction of a two-story worship center for the Orthodox Jewish Congregation. It would be approximately 78 feet in width and 230 feet in length (south to north) for a total of 16,000 square feet, considering the second story. The roof is flat instead of gabled, so the height of this building would be somewhat less than adjacent properties to the west. The building site plan was shown. The entrance off 96th Street goes around to the east side of the building with parking located in the rear. Along the west boundary, they have sought to maintain the existing vegetation. They have submitted to Scott Brewer the landscape additions they have included on the site, pursuant to the ordinance. Immediately to the east and approved by the BZA and Plan

Commission, is the parking configuration for the College Park Baptist Church. Their proposed additional parking spaces come to the boundary of the property. Since the last BZA meeting, Mark Swanson and Dennis Lockwood, who are the engineers and architects on the project, took some photographs of what exists between the property and the existing houses to the west. Pictures were shown of the tree/parcel boundary between the two properties. The purpose was to show the density of vegetation in the area. When it is augmented by the additional landscaping, they believe their impact would be negligible. Whether the parcel was 135 feet or 500 feet wide, they could place the building at the 25-foot setback for this piece of property. The site plan and parking area (ADLS) had been discussed at the last meeting. The September 12 meeting was attended by 15 to 20 of the neighbors. They expressed concern about the security of the location and their backyards. A suggestion was made to either gate the entrance or somehow secure the back area from those who would be prone to mischief in the back parking area after dark. He had spoken with Tim Green of the Carmel Police Department about gating the area. The Police Department preference was dusk to dawn lighting as opposed to gating. A gate would prevent the Police from access to the parking lot area. Secondly, they were asked by the residents to mark trees on both properties that would remain along the boundary, so they could assess the end result of the additional landscaping. That was done by Mark Swanson's office. The third request was that they increase the landscaping along that west side. They have done that over and above the ordinance requirements. The Department made the recommendation or suggestion that they consider a rotation or flip flopping of the building on the parcel so that the entry way, driveway and orientation moves from the east side to the west side. For religious reasons, the worship area needs to face east. For practical reasons, they believe having the traffic re-directed to the west side would be less friendly to the neighbors instead of having a screened/landscaped backyard facing their screened/landscaped backyards. So they have not included that flip-flopping of the building.

Favorable:

Ben Strout, 11576 Senie Lane, Carmel. He was familiar with this organization and was in full support of their activities. He felt they would be a credit to the community and serve the community well.

Remonstrance:

Steve Noone, 9653 Cypress Way, Carmel, adjacent to the parcel. He had distributed a letter at the last meeting for the Board and gave an additional copy to Mrs. Conn. He delivered a petition from 23 adjacent property owners and 6 property owners across 96th Street. There are 32 properties and the petition had been signed by 23 of the 32. Only one of the owners adjacent to the construction is in favor of the project. The five other adjacent property owners to the north did not sign, because they are not directly affected by the construction. They appreciated the opportunity to meet with Mr. Coots and the Rabbi earlier this Fall. However, he and his wife were still not convinced and still oppose the petition. They tried to point out in their letter that they did not understand how this petition had gone forward to this point without all the checks and balances prior to that. Certainly the owner, the architect, and the attorney should have known there would be a problem with this variance before they went to the expense of purchasing and designing this property. The two key points they opposed were first, the minimum lot width variance. It is a significant reduction in the requirement (almost 50%) for a use other than a residence. Second, they were concerned about the Special Use variance because of security. With a private residence, there would be someone there virtually all the time. With the Special Use it would not be occupied all the time, especially in the evening. They felt others, for whatever purpose, could gain access to their properties through this property. There are no sidewalks or berms along this busy section of 96th Street for anybody walking, especially at night.

Steve Hantz, 9605 Cypress Way, adjacent to the property. His opposition to the lot width variance and proposed use by Lubavitch had been documented in a letter which had been given to the Board. He wanted to address the Findings of Fact for a Special Use amendment approval request. He addressed five of the six points. First, the premise is physically suitable for the proposed special use. He did not feel it was suitable because of the width of the site, 135 feet instead of the 200 required. Secondly, it would not injuriously or adversely affect economic factors, such as cost benefit to the community and its anticipated affect on surrounding property values. He disagreed because the properties now abut an empty wooded lot which is zoned residential and will be worth less if they are adjoining a two-story building that is 20 feet from the property line. Third, it will be consistent with social neighborhood factors, such as compatibility with existing uses and those permitted under current zoning. He felt the compatibility with existing uses called into affect that hidden parking behind the building which is accessible only through a narrow thoroughfare 800 feet from 96th Street with a narrow entrance and exit. Next, the Special Use will not adversely affect vehicular traffic in and around the premises. He thought it would affect both pedestrian and vehicular traffic. At the neighborhood meeting, the Rabbi informed them that certain members would be walking to the building on Saturdays. There are no sidewalks or shoulders along this busy section of 96th Street making it dangerous for both the pedestrians and the vehicles trying to avoid these pedestrians. He showed a visual with both the site plan and the neighboring houses. He felt the building dwarfed the residences. One of the largest houses in the area was almost as big as the Lubavitch property, but sets on a property more appropriate to its size with buffering. His main concern was that the property was not suitable from this building. A property which was twice as wide and only half as deep would be much more suitable than this narrow property with the back half not being used.

Robert McLaughlin, 9649 Cypress Way, adjacent to the parcel. He appreciated the neighborhood meeting with the Rabbi and his architects and attorney on September 12. It was informative, but at the end the concerns some of the neighbors had at the beginning still remained. One of his greatest concerns was the lack of a master plan for the north portion of the parcel. They have been told verbally that there were no plans and it was not part of the project. Yet it was part of the property and it needed consideration. It was relevant to the neighbors. It raised a significant concern over the economic impact in the future. He did not have any concern with the Special Use and hoped they could find a suitable location. His main concern was with the lot width variance. They were told at the September 12th meeting that there was no real awareness that the lot width was a particular concern. Yet he has since learned there was dialogue between Lubavitch and College Park to discuss the use of property to the east of Lubavitch in order to accommodate their planned construction. He thought it was unfortunate they had purchased property that was not suitable for their intended use. This project does not encroach upon the legal setbacks that were imposed; however, it certainly is a tighter fit than anyone would want. He was surprised that Lubavitch bought this property, knowing what they needed to do, when there is an abundance of property available. They were led to believe that it was the ready availability and the price of the land that were good. In listening to Mr. Coots and learning that the gate would not be beneficial for law enforcement, it was contrary to what they had discussed in terms of the lighting. They were concerned there would be substantial light pollution from the parking lot area. They were told if there was going to be expansion; it would be additional parking to the north, requiring more lighting. Now the lighting will not be on timer, but be dusk to dawn lighting for security. He felt that was not a realistic thing to ask the neighbors to do. There were some other environmental concerns. While Mr. Coots showed photos of the dense foliage between the properties that is not true all year.

Rebuttal:

Mr. Coots stated that any future development on this property would need to come to this Board for an amendment to the Special Use. There was no plan or purpose for expanding the facility north. The size of the structure only needs to be compared with the size of the structure that exists at College Park Baptist Church and their proposed expansion. This is considerably smaller as a religious use. No where in the consideration under Chapter 21.3 is the square footage of the structure, if it meets the setback requirements, made a consideration for granting or denying the Special Use. Their dimensions were dictated by the size of the parcel. The longer dimension versus the width of the structure was dictated by the setbacks they seek to preserve. They did contact College Park Baptist Church, seeking a trade of property; Lubavitch taking property in the back and College Park taking property in the front. Then they would have applied for a road to access a more rectangular piece of property and build the structure to the north. College Park informed them that they were so far into their process, including having been through the Plan Commission and Special Use Amendment for their property that they did not want to start over. The entry off 96th Street will have a sidewalk added for this property. The Department Report shows that the future for 96th Street is a divided boulevard with pedestrian walkways, but that is not going to occur in the near future. The addition of traffic to this entryway, which has been before TAC, and all of their drainage and TAC issues have been resolved. They do meet the Carmel standards for driveway entrance, for building setbacks and for all the required technical aspects for this site, including the access point on 96th Street. The parking area will accommodate 37 parking spaces. The Findings of Fact, that were submitted, address the other issues that Mr. Hantz pointed out and evidence could be found on both sides to support some of his concerns. The evidence also supports the applications as submitted.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The Comprehensive Plan for the Township does state that places of worship are complimentary uses to residential areas. The Department was in favor of the Special Use. The variance for the lot width could be seen as an opportunity to get better design or higher buffering for this site. The Board could impose conditions such as greater evergreen landscaping on the west property line or shielding of lights, etc. The Department did recommend that the petitioner flip the site plan from west to east just to move the 2-story building scale over to the east side of the property. The Board could impose conditions, but overall the Department does recommend positive consideration after all concerns were alleviated or addressed.

Mrs. Torres asked how long this property had been under contract or how long ago did they purchase it and was it contingent upon rezone?

Mr. Coots stated the purchase was dated August 2005 and was not contingent upon a rezone.

Mr. Dierckman stated these were difficult cases to deal with. He was completely in support and had a strong desire for another shul to be in Carmel and Hamilton County. But this was where they had to remember their duties to the entire community. Please explain how they could get over the Findings of Fact that states the premises in question were particularly physically suitable.

Mr. Coots stated that if the Board started with the premise that a religious use, as a Special Use, was a preferred use within the zone classification. Then the physical suitability of this site was that it would be adjacent to an existing religious site on a major thoroughfare. The alternatives for this S-1 property, with a 135-foot frontage, could a subdivision with a 24-foot road and 15 to 20 lots backing up to the

individual lots of Shelborne Greene. It seemed to him that a single use with a single building, designed as it was, to back up to the adjacent properties, accomplished the physical suitability. The alternative was not very aesthetic.

Mr. Dierckman asked the density in S-1 zoning. Was it one single residence per acre? How many could be on this property?

Mr. Coots was not sure it was one house per acre, but would be a minimum of 15,000 square feet per lot. The parcel is 3.7 acres. It could probably be 9 to 10 homes, without seeking a lot variance.

Mrs. Torres stated they welcome a place of worship near a neighborhood. She asked the Department to help clarify about the premise that it was particularly suitable for the proposed Special Use. She did not feel they were questioning that a place of worship could be located there. The problem came with the lot width. She was having trouble with the way the lot width Findings of Fact were stated. She felt the physically suited would fall more under the lot width rather than Special Use. The Special Use was not the problem. It was fitting too much building on a lot that was too narrow.

Mr. Coots stated that beside the fact that the ordinance requires a Special Use/Variance to have this width, they would be able to do what they seek to do if he was going to build a residence that size. They could build a house on the parcel that size and be that distance from the west neighbors. Their design was to seek to make it backyard friendly as a house would be at that location. They have solved the physical restrictions on the property by the design of the proposed use. Once the Board says that a religious facility within an S-1 zone classification was contemplated by the Ordinance for S-1, then how would the proposed use fit onto the narrow lot? They could still build this building with this configuration even if the lot were 500 feet wide. The variance was for the 135-foot width. But if the lot was wider, it wouldn't change this configuration.

Mr. Hawkins asked if the Lubavitch Worship Center was relocating to Carmel or was it new.

Mr. Coots stated they were relocating from Marion County.

Rabbi Abraham Grossbaum, 137 College Way, Indianapolis. They were presently located in Indianapolis and used borrowed space for their various worship functions. This location was central to where they want to be for a permanent home of their own.

Mr. Hawkins asked how many were in the congregation.

Rabbi Grossbaum stated the answer would be unclear, because the nature of their worship was not structured with membership in mind. People can be a member of Lubavitch if they are of the Jewish faith and pay \$10 per year for membership. They were part of an International Jewish organization with several centers around the world. Central to their mission was not to be structured for members only.

Mr. Hawkins stated from the floor plan and number of parking spaces, it did not appear to be a traditional place of worship. It looks more like a daycare or preschool facility with daily traffic.

Rabbi Grossbaum stated they had no plans at this time for a preschool/daycare. They do have a summer program for campers and hope to have that at this new facility. They have weeks during winter break with programs for children out of school.

Mr. Hawkins asked if he saw additional parking to the north in the immediate future.

Rabbi Grossbaum stated they would love it, but do not expect throngs of people with a police barricade holding back the crowds.

Mr. Hawkins had reservations about the lighting because it does not go down to the zero they typically like to see.

Mr. Coots thought the photo-metrics they had submitted to the Department, with the relatively low wattage and the low profile of the lighting, met the half-foot candle at the boundary.

Mr. Hawkins stated he saw some .6's and .4's going down to .1 as they go north with a line drawn through them.

Mr. Mark Swanson stated they were .2 or less.

Mr. Coots stated that the suggestion from the Police Department for dusk to dawn lighting was bad. They had represented to the neighbors that the lighting would be put on a timer to go off at 10:00 to 11:00 in the evening or it would be off when they are not utilizing the facility. He thought the College Park Baptist Church to the east had dusk to dawn lighting. The lighting all along the west and east faces of the Lubavitch building, per the grid on the photo-metric chart, were wall-mounted sconces or sidewalk lighting. The fixtures in the parking lot would be 18-foot standards. The typical standards are 20 to 22 feet.

Mrs. Conn stated she could not find an enlarged lighting plan, but a way to alleviate the point-source lighting, when someone could see the actual bulb, would be to use the cut-off fixtures or put shields on the parking light poles, so the neighbors could not see the actual source of the light.

Mr. Hawkins asked if it was to be .2 at the property line.

Mrs. Conn stated it was either .1 or .3, she would need to check. After checking, she stated that the zoning district does not specify lighting, but it would be safe to say .3, which is imposed in the overlays.

Mr. Dierckman moved to approve **Docket No. 06050007 SU, Lubavitch of Indiana Worship Center.** The motion was seconded by Mr. Hawkins and was a **No Decision vote (2-2)** with Mr. Dierckman and Mr. Broach casting the negative votes.

Mr. Dierckman moved to approve **Docket No. 06050008 V, Lubavitch of Indiana Worship Center.** The motion was seconded by Mr. Hawkins and **DENIED (0-4).**

Mr. Broach wanted to explain his vote. There had been two Special Uses approved this year for places of worship. The use in and of itself was not objectionable, they welcome the use. The way this lot and building were configured, it was difficult to pass the first two tests, in his opinion. If there could be a

creative way to place this on the property so that it was less intensive or had more buffers, they would be willing to hear the project.

6h. Clay Terrace, Red Robin

The applicant seeks the following development standards variance approval:

Docket No. 06090002 V Section 6.4.A of PUD Z-386-02 Minimum gross floor area

The site is located at the southeast corner of Clay Terrace Blvd & 146th St, and is zoned PUD/Planned Unit Development. Filed by John Finnemore of Red Robin.

Present for the Petitioner: John Finnemore, Red Robin International. They own and operate about 350 Red Robin Gourmet Burgers and Spirits across the country. They are a family friendly restaurant, featuring 22 gourmet burgers and a bottomless list of French fries. They are planning to come to the Indianapolis area with three initial locations; one in Plainfield and two in Carmel. They are in the DP and ADLS process for the second location in Carmel at 99th and Michigan Road. This third location is in the Clay Terrace Development. The PUD that approved Clay Terrace in 2002 stated that “all buildings which are not connected to or an integral part of the Range Line Road Streetscape Development shall have a minimum of 15,000 square feet gross floor area, provided however that one stand alone restaurant building is allowed that shall have a minimum of 7,500 square feet of gross floor area.” The Kincaid’s restaurant used that one exception to be allowed to have a 7,500 square-foot restaurant. They were requesting a variance be granted so that the PUD Ordinance would allow for a second building/restaurant to be in the 7,500 square foot size. Their proto-typical building is about 6,800 square feet. They have added a patio and little more square footage to get it up to the 7,500 square feet so it would be a matching size establishment to the Kincaid’s at the other end of the development. They felt that the request to be allowed to have a smaller building in this particular location, at the southeast corner of Clay Terrace Blvd. and 146th Street, would fit in very well with the rest of the development. A site plan was shown. He believed there were five other restaurants in Clay Terrace, none of which were 15,000 square feet. He felt they would be a very compatible size. In addition, having a smaller building out in front of the DSW Shoe Store and the Wild Oats Store helps with their visibility and impacts the neighborhood less than a larger building would. It allows for them to provide 28 parking spots on their site which would help with parking in the area.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The restaurant building would meet all the standards of the Clay Terrace PUD language. The only variance was for the square footage. The Department recommended positive consideration of the variance.

Mr. Dierckman stated that in his opinion this went completely against every effort they ever made relative to the Clay Terrace quality. The 7,500 square feet was put in place for a very specific reason and that was to prevent these types of operation. He was surprised the Department came out in favor of this. He would like to hear a better explanation of why the Department was in favor of this use at this location, particularly right at the entryway of Clay Terrace. It totally sets the wrong tone for Clay Terrace and was not the image they wanted. He was surprised by Lauth wanting to pursue this, if they were now in control of this situation. He did not know who was in charge and didn’t really care. He was totally against this. They had put in hours upon hours of time on Plan Commission. For this to

come before this Board with a positive recommendation was kind of surprising. Kincaid's is a high-end steak place and food. This is a fast food burger joint.

Mr. Hollibaugh did not think this qualified as a fast food burger joint. It certainly has a different character than the other restaurants in Clay Terrace. The City was not responsible for leasing. They have worked with and talked with Lauth and Clay Terrace on trying to find a number of projects for that corner. His understanding was because of access and parking issues, they have had a difficult time finding a suitable use for this site. In this case, a little bit smaller building allowed for a little bit of additional parking. They have agreed to meet all the architectural design considerations. It had been a couple of years since Clay Terrace was approved. They felt maybe, as part of an evolution, it made more sense to allow a use than to have a pad set vacant. They did not take the decision lightly. More investment was better than less and there are other buildings still unoccupied. He was not sure they were completely pleased with the way Simon had filled the center, but he felt this was a baby-step in the right direction.

Mr. Hawkins moved to approve **Docket No. 06090002 V, Clay Terrace, Red Robin**. The motion was seconded by Mr. Dierckman and **DENIED 1-3**, with Mr. Broach, Mr. Dierckman and Mrs. Torres casting the negative votes.

Mr. Finnemore asked if he could make a comment to address and clarify Mr. Dierckman's comments.

Mr. Hawkins asked Mr. Molitor the procedure.

Mr. Molitor stated it would be outside the Public Hearing at this point.

Mr. Dierckman stated he did not want them addressed. Mr. Finnemore could send him an email.

7h. Hunters Quest

The applicant seeks the following development standards variance approval:

Docket No. 06090025 V Chapter 23F.13.01.A ground signs prohibited in Overlay

The site is located at 104-122 E Carmel Dr. and is zoned B-8/Business within the Carmel Dr – Range Line Rd Overlay.

Filed by David Fineberg of The Fineberg Group, LLC.

Present for the Petitioner: David Fineberg of The Fineberg Group. The variance was for a ground sign prohibited in the Carmel Drive/Range Line Road Overlay Zone. The building has been in existence since approximately 1976 and well maintained. They were seeking improvements to keep up with the rest of the City. One of the improvements in the ADLS procedure was a multi-tenant, illuminated ground sign to replace the existing pole sign. They only needed the one variance for the multi-tenant ground floor building and a multi-tenant building complex. The existing sign is 21 feet. They were requesting only 6 feet which would eliminate 15 feet of height. He shared photos of some of the ground signs in the Carmel Drive and 116th Street area. (Century 21, Starbucks/Charter One, KFC and Mike's Express Carwash.) Mike's Express Carwash sign is 12 feet by 12 feet. The Hunters Quest sign would be 6 feet by 12 feet. Their sign would be similar in look to the Mike's Express and KFC signs. Two illustrations were shown. The first was proposed in the ADLS application which would be 12 feet wide and 6 feet high ground sign. The Staff comments at the ADLS presentation requested Hunters Quest instead of the numbers to appear on the top, which was shown in the second illustration. They

also preferred this one. It did not get addressed in Special Studies. It would be copyrighted translucent material to help identify the building. They have a new tenant which has requested the Hunters Quest be removed from the center of the building and replaced with their name. They will have a survey done to make sure they were in compliance. He showed a copy of a site plan they received when the City was putting in the streetscape for Carmel Drive. There is a 40-foot right-of-way. The 20-Year Thoroughfare Plan requests 45-feet from the center line. The Ordinance requires a five-foot setback from the 45-foot for the ground sign. They will probably need to extend the curb. They were willing to do that, pending the results from the survey company.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. This site and building were developed before the creation of the Carmel Drive/Range Line Road Overlay District. This new sign that appeared before the Plan Commission would phase out the existing pole sign. The Department recommended positive consideration.

Mr. Dierckman asked about the current sign.

Mr. Fineberg stated it was approximately 10 feet wide and 21 feet high. The new sign would be slightly wider at 12 feet and only 6 feet high. It would need to be moved back to comply with the Thoroughfare Plan.

Mr. Hawkins asked if he was making a commitment to remove the current sign.

Mr. Fineberg confirmed the sign would be removed.

Mr. Hawkins asked about the other sign for the new tenant needing approval.

Mrs. Conn stated it would need to comply with any existing sign package. If not, they would come through a sub-committee of the Plan Commission.

Mr. Fineberg had recommended to the new tenant that they apply for a sign permit within the new standards that were set this past August.

Mr. Dierckman moved to approve **Docket No. 06090025 V, Hunters Quest**. The motion was seconded by Mr. Hawkins and **APPROVED 4-0**.

8-9h. Monon & Main, Unit 2E

The applicant seeks the following development standards variance approvals:

Docket No. 06090026 V Section 15.26 of PUD Z-462-04 non-residential on 2nd & 3rd flr

Docket No. 06090027 V Section 2.13.B of PUD Z-462-04 2-car garage requirement

The site is located northeast of Third Ave NW and Main St., and is zoned PUD/Planned Unit Development. Filed by Vicky Earley of Artichoke Designs.

Present for the Petitioner: Vicky Earley, owner of Artichoke Designs at Range Line and Main. The store has been open about a year and her design business was about 10 years old. They were one of the first to embrace the Arts & Design District. They have enjoyed tremendous success. They intend to keep that retail location, but it was not sufficient to hold the interior design and fine arts business. They were hoping to take the seven designers to the Gunstra townhome and allow them the space necessary for interior design displays, window displays and fine art displays. She does not intend to increase the number of designers at this time. The retail services, with four retail specialists, would also remain the same. They have two fine artists included in their number of employees. They were currently running the business out of the back room at Artichoke Designs. They have about a ten by ten space for the seven designers. It was her hope to provide her clients, who range in age from 30's to 80's, with pleasant, quiet surroundings to view their fabric samples, catalogs, etc. This would allow the retail location to continue to thrive.

Michael Earley stated that one variance was to allow the first floor garage area to be used for display of art and interior furnishings. The second one was to use the second and third floors for non-residential interior design, consulting and art designer work space. All three floors would be used by consultants to meet with clients individually to do selections, etc. It would not be retail items, but taking orders. On the first floor, the traditional garage area would be used for displays. There would be no moving of walls or redesigning of the structure. It could be converted back to parking space at any time. Without the variance, the limited amount of space made it limited for display space and for people coming in for consultations. Having the first floor area would make it easier for the older clients to have easy access. The second floor would be used as a showroom for interior design furnishings and fine art. It would be much like walking into a home in terms of what would be seen. The clients would be coming in and examining items to order. There would not be a lot of things going in and out, as with traditional retail. This would be consultation space. The third floor would be used for work space for 1 to 3 artists or designers. Today they were crammed into the back at Artichoke Designs. They felt the design fit with the vision for the Arts & Design District. The clients would be the same ones that are coming into the retail outlet today, only they will be coming down the street for the consultation. So the traffic would not increase in walking or parking traffic. There would be parking in the Arts & Design District. Additional parking would not be needed for employees, since the number was not increasing. Most of the deliveries would continue to be made at the Artichoke Designs warehouse on Range Line. The trash would be no more than a regular residence. They anticipate 3 to 5 clients per day. There may be times when the art portion was open on weekends, creating a little more traffic. But those people would be coming to spend time in the Arts District also.

Members of the public were invited to speak in favor or opposition to the petition.

Favorable:

John Swinehart, 13392 Sassafern Drive, Carmel. He was in favor of the Earley's project and felt it was within the Zoning Ordinance for business use. The way the Ordinance is written, it provides very little space in that first level for any type of business. Their use would be very low impact and certainly add to the vitality of the Arts & Design District.

Remonstrance:

Pat Robinson, 3277 Smokey Ridge Circle, Carmel. He owns six residences across the street and north of First Street NW. He supports their business, but has a severe concern for the parking. He just learned the garage would not be used for parking, so they will need to park their cars someplace other than at the unit that was designed to house them. If there was the same request from the other 80 units

in the development, three to five clients per day times 80 units would be several hundred extra vehicles per day. He owns the properties at 204, 210, 216, 222 First Street NW and 101, 115 Third Ave NW. They can not get in and out of their parking places now. He goes by almost every day during the lunch hour to run people away and/or call 911 to have the police remove the people. If there were more people, what would he do then, hire somebody? He has people that get blocked and can not get out to go to school. They have deliveries that cannot get down First Street going across the Monon to the west. His problems are magnified by the trash trucks, delivery trucks and semis that come in. They sometimes block the traffic for everyone. His sidewalks are cracked and broken. The yards are driven on and he has to make repairs. Guntra or the City needs to rebuild First Street, then they would have wider space, trucks could pass and there would be spaces to park some cars. His concern was if this was granted, then it opened the gate and the Board would feel compelled to allow others.

Rebuttal:

Mr. Earley appreciated the concerns. The people coming into the Arts District were parking now and walking to the store. Their personal cars would probably continue to be parked behind Artichoke Designs.

The Public Hearing was closed.

Mrs. Conn read from the Department Report. All of the units currently along Main Street (shown on overhead) could potentially be 100 percent commercial/retail. That would be approximately 19 townhome units, not the whole Monon & Main development. She had spoken with Les Olds, Director of the Carmel Redevelopment Commission and he stated the CRC is currently looking into constructing a public parking garage just east of this development, with approximately 100 parking spaces available. An additional 156 parking spaces would be reserved for the tenants/residents surrounding that parking garage unit. The Department does recognize that this could possibly set a precedent, but the BZA is not a precedent setting body. Each case would be looked at separately with their individual circumstances. The Department recommended positive consideration of both variances.

Mrs. Torres asked about the timeframe for the parking structure.

Mrs. Conn did not have a timeframe, but knew they were trying to push the parking project to the front burner, because parking has become an issue within Old Town.

Mr. Dierckman asked if these were the units currently under construction. He always thought when they had this zoned as a live/work concept; the proprietor would live above their store. This was of concern to him because he thought they were going to hold fast to the live/work unit. He was not trying to discourage them to be in the Arts District. He thought there were going to be, if not already, store frontage for this kind of use in the design buildings on Range Line. He thought there were proposals for the area just south of First Street SW along Range Line Road. Unless he was mistaken, he thought the proposed parking garage was on the other side of Range Line Road from these developments.

Mrs. Conn stated it would be at the northeast corner of Second Avenue NE and Main Street, which is a little east of this development.

Mr. Dierckman was of the impression that they wanted owner occupied units at this location and it wasn't going to be 100 percent business in any unit. He did not want to discourage them. This was

supposed to be small incubators and then the businesses would lease other space as their business grew. It was difficult for him to have all three floors for commercial use.

Mr. Hawkins asked to see a front elevation for conceptual understanding. Was the 15 by 14 room to serve as the business on the first floor?

Mr. Earley stated they started to look at moving down to the Arts District and it has evolved. The design part of the business is one-on-one to look at samples, walk around samples and have quiet conversation. The clients are spending a fair amount of money. They would have very low traffic. Some time in the future they may look at moving. Their intent was for the space to be utilized for this low-impact business and consultation. It really fits a perfect home-type environment.

Mr. Hawkins agreed with Mr. Dierckman in some respects. He applauded what they were trying to do and accomplish, but did not know if using all three floors and the garage was long-term in the best interests of this project.

Mrs. Torres felt they had done a unique approach to this. Looking at the small space that was set aside for business, maybe the person would have lived there, but had second story space available for office or design. She applauded them for coming before the Board, because they could have bought it as a residence, converted the inside and made it look like someone lived there. She applauded them for going through the right channels to do this.

Mr. Hawkins asked if they really needed all three floors and the garage to make this work.

Mrs. Earley stated that they really needed the first floor for her older clients who could not manage the stairs. They are homeowners in Carmel. They would like to live there sometime. She is an artist and designer and it feels like home to her. With a son in high school, they were not ready to move to a condominium in the Arts District. The second floor could be utilized to showcase furnishings. Right now Artichoke Designs is very full with displays, as well as retail items. One person said they look like a turkey stuffed at Thanksgiving. The Gunstra townhome was probably not the perfect scenario. But there probably wasn't a perfect scenario. But it does give them the opportunity to live in their investment at some point. They are not anticipating moving any walls or getting rid of the garage door or the retail location. They want to use it with the seven designers to showcase their high-end furnishings, utilizing the kitchen area to display kitchen accessories, lighting, etc. The third floor would be for quiet space to plan, spread out and have fabric books. They have lots and lots of samples. The third floor would be used by the designers. They want it to be above board. If it was not right for the Arts & Design District, that's okay. She wanted the true utilization, at this time, to be known and recognized.

Mr. Dierckman asked the normal hours of operation for the second and third floors and would it be predominately during normal business hours. Would anyone be working when the residents on either side would be home from working on the first floor of their unit?

Mrs. Earley stated it would be by appointment only. Their retail hours are currently 10:00 to 6:00 and that was generally when they saw clients. Although there was an occasional time when they saw working women after regular hours, they were all very quiet.

Mr. Dierckman asked if they would agree to normal business hours on the second and third floor from 9:00 AM to 7:00 PM or something like that and would they make that a commitment.

Mrs. Earley did not see that as a problem in terms of seeing clients, but hopefully she would be able to work up there to do design work much later.

Mr. Broach stated that it seemed to him if it was done once, it would be done 19 times. Maybe this live/work was not economically feasible. But until the parking was there, he was a little uncomfortable with the concept.

Mr. Dierckman stated to Mr. Hollibaugh that obviously the Department supported this project when it came before the Plan Commission and the live/work unit concept. There was a reason they approved it like this. It had been done other places and this should be an exception and not the rule.

Mr. Hollibaugh stated that he was not sure that anybody really had the insight into expanding the downtown urban environment. So they were not uncomfortable with some flexibility on this project. They were hearing there are others that want to do something similar. The City was improving the on-street infrastructure in front of this property and also across the street. There will be availability for on-street parallel parking from the round-about being constructed at Fourth to the Monon. There would be some additional parking in the area and there were going to be other developments that were ongoing. The City will expand the on-street parking capability where ever they can, plus the potential for the parking structure within the next couple of years. He felt they were comfortable proceeding cautiously. The back of this property will be off limits for commercial parking, so that the people within the project will not be displaced. The public parking will be outside the project along Main Street and then Third Street which runs north/south through the project can also have commercial parking. They think with the boundary for the Arts & Design District being Fourth Street, it will help compress and make sure they are not going to continue to bleed commercial out farther along Main Street into the neighborhood and water down the quality of life in those areas.

Mr. Dierckman asked about the live/work units that are west of this project.

Mr. Hollibaugh stated they are part of the overall project.

Mrs. Torres moved to approve **Docket Nos. 06090026 V and 06090027 V, Monon & Main, Unit 2E.** The motion was seconded by Mr. Hawkins and both received a **No Decision vote (2-2)** with Mr. Hawkins and Mr. Dierckman casting the negative votes.

Mr. Molitor stated, according to the BZA Rules, the item would have to be re-heard at next month's hearing with the full Board present.

10h. TABLED: Forest Glen, Lot 3 - Printing Plus

The applicant seeks the following use variance approval for an office use:

Docket No. 06090012 UV ZO Chapter 6.01 Permitted Uses

The site is located at 2110 E. 96th St. and is zoned S-2/Residence.

Filed by Col. Rex A. Neal of Printing Plus.

11-21h. Bill Estes Pre-Owned Facility

The applicant seeks the following development standards variance approvals:

REINSTATED: Docket No. 06090013 V	Chapter 23C.12.B	parking lot pole light height
Docket No. 06090014 V	Chapter 23C.12.C	foot-candles at property line
Docket No. 06090015 V	Chapter 25.07.02.08(b)	total number signs
Docket No. 06090016 V	Chapter 23C.09.D	façade projections/recessions
Docket No. 06090017 V	Chapter 23C.09.K.2(e)	building material EIFS
Docket No. 06090018 V	Chapter 23C.09.G	windows - design
Docket No. 06090019 V	Chapter 23C.09.I	windows – percent of façade
Docket No. 06090020 V	Chapter 26.04	north bufferyard reduction
Docket No. 06090021 V	Chapter 26.04	south bufferyard reduction
Docket No. 06090022 V	Chapter 23C.10.3.5(b)	perimeter parking lot plantings
Docket No. 06090023 V	Chapter 23C.10.3.5(c)	screened parking within front/side yard

The site is located at 4102 W. 96th St and is zoned B2/Business and I1/Industrial within the US 421 Overlay. Filed by Mary Solada of Bingham McHale.

Present for the Petitioner: Mary Solada, Bingham McHale, 2700 Market Tower. Also present were Alan Tucker and Mike Monaghan from CSO Architects who have worked closely on the design for the proposed facility. A picture of the existing facility was shown at the northwest corner of US 421 and 96th Street. In this proposal, the current building would be demolished leaving some site infrastructure. There is also a US Scuba building located west of this building which would be demolished. This site will create a campus with the Bill Estes facility located at the southwest corner of 96th Street and Michigan Road, which is in Marion County. Much of the existing parking lot would remain and some of the existing mature trees. The design of the new facility was shown. The goal is to do two things that are a little unique in the corridor. One is to try to bridge the design gap between an existing facility that is successful and well-maintained in Marion County and to create a brand for Bill Estes. In their view, there needs to be a visual connection between the existing facility and the proposed new building. Secondly, the traditional architecture in the Overlay, which is the highest set of design standards in the City, was developed and prominent before there were used car lots. Therefore, they were asking for some flexibility in terms of the design. They were not sure any design under the current Ordinance would work from a business standpoint and selling products, such as pre-owned vehicles. The variance for the pole light height was for existing lights on the site. It would cost \$40,000 to remove them. They would like to maintain the 30-foot poles and add shielding to create a uniform design and to avoid the spillover lighting. There are no residences near the site. This is a very heavily traveled portion of Michigan Road. They would exceed the .3 foot candles at property lines. This is a heavy commercial area and they were concerned about inventory which is stored outdoors. The variance for signage would allow them to break the signage out, instead of making it all one sign. The square footage does not exceed the Ordinance. The new building does not have the façade projections as required by the Ordinance. They essentially have two front doors because of the two road frontages. They felt this justified the variance for the façade projections typically required. They felt that EIFS, which is an approved material under the Ordinance, was an appropriate material. Primarily because it was allowed by Ordinance and they have a business need to create continuity with the existing building south of 96th Street. They disagreed with using some type of brick-like product as the Department suggested. It was not about money. It was about trying to create a visual impact and continuity, which they felt was diluted by using a brick-like material. They felt this project has the opportunity to offer a shot-in-the-arm to the entryway to Carmel. Some of the buildings on the east side of the street are not new. They do not conform to the Ordinance and have not been redeveloped. Their client has owned this property before the Overlay came into effect and has a unique business for the Overlay Zone. They felt, to have a show room, they needed more than the 75 percent windows allowed on the first floor by

the Ordinance. With regard to the landscaping, there are utility easements to the north of the proposed building that would not permit any sort of planting in that area. They were trying to do plantings where they could, knowing they couldn't plant in that area because of the underground utilities. They do not want to tear up existing curbing to create a five-foot buffer area at the corner of 96th and Michigan. Traveling west, the site fans out and they could make a 15-foot planting bed. They were willing, for the record, to make a contribution to the Parks Department to provide plantings that would make up for the ones they would not be able to plant. They do not want to plant in the easement area because of the long-term growth and maintenance of the plants plus the visibility of the site. There is an Ed Martin new car dealership north of this facility. However, the pre-owned vehicle market is a different market and is very dependent upon the visibility of the vehicles. The inventory is constantly changing. It is not a destination visit like the new-car shopper. It is the experience in the industry that people drive by, see a vehicle and get excited to see the vehicle. Designing a building that works for the client's business needs has been quite a challenge. They felt the Findings of Fact they had presented should be adopted and the variances lawfully granted.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The Department was against most of these variance requests. This site is at the gateway to Carmel at 96th Street and Michigan Road. The Department felt this should be more of a showcase site with the site complying with all landscaping and architectural standards for the Overlay. The Ed Martin Dealership north of this location has complied with the Overlay standards. The business seems to be doing quite well. The Department Report addressed all the issues. The Department would rather see "Quick Brick" or "DecoBrick" than EFIS due to longevity and quality issues. The Department recommended positive consideration of Docket Nos. 06090013V-06090015V. The Department recommended negative consideration of Docket Nos. 06090016V-06090023V. If inclined to do so, the Board could impose conditions if the variances were approved.

Mr. Dierckman thought they had already agreed to provide the landscaping for the Parks Department.

Mrs. Solada confirmed for the record.

Mrs. Torres asked about Docket No. 06090013V which had been withdrawn and then reinstated.

Mrs. Solada stated that Mr. Estes spoke after the Special Studies meeting that he would be willing to withdraw that variance. When it was investigated, the cost of replacing these poles would be at least \$40,000. The Department has the information about the shields in the record. The Ed Martin facility apparently does meet the Ordinance. She had checked and they did not seek variances. However, that is a facility for new vehicles. This facility would be pre-owned vehicles.

Mr. Hawkins asked the size of the two sites and if they were both being considered.

Mrs. Solada showed the site. Both buildings will be demolished. The landscaping to the west along 96th Street would meet the Ordinance.

Alan Tucker stated the property designs were for the front part of the property. They do not have development plans for the property in the rear.

Mrs. Solada indicated the property related to these requests on the site plan.

Mr. Hawkins' concern was the two parcels with bufferyard reduction and perimeter parking. If they consider approval of the variances, would they also be giving approval for the property to the west?

Mr. Molitor understood the petition was not concerned with the other parcel to the west.

Mrs. Solada confirmed the legal description and plans do not relate to what was shown as the second parcel. The outline showed what the client currently owns. She confirmed nothing past the initial lot was subject to any of the variances.

Mr. Dierckman stated he and Mrs. Torres had participated in the Special Studies meeting regarding this project. There are a lot of variances and it was unusual for the Board to take a different position than the Staff on these matters. This is a unique situation with an existing building that is an eyesore. The Special Studies thought this proposal was an accommodation to get rid of the eyesore and yet not strictly adhere to the Overlay Zone. It would look so peculiar in this instance to look different from the property across the street that is the same company. This project has been developed using some of the elements in the other property, columns, colors, etc. It was kind of a happy median to get this corner improved to everyone's satisfaction. They did think it would be different pole lights and that was a disappointment. The shields would probably be agreeable.

Mrs. Torres asked if the foot candles could be reduced to the accepted zero with the shields or was there no way to do that with the height of the poles.

Mr. Tucker stated they had brought them down significantly with the shields. They have done the best job they could with the cut-offs minimizing the spillage. They would not be able to do any thing better with any other shaped shield on that fixture.

Mrs. Solada pointed out, for the record, the area for the variances was for the area/rectangle on the right and not the tall rectangle to the left.

Mr. Hawkins stated he knew they had worked hard and he liked some of the elements, but there a number of them he did not like. He thought the bufferyards and plantings could be accommodated if they worked at it.

Mrs. Solada felt Mr. Estes thought the most important variances to him were the building ones as opposed to bufferyards and landscaping. He does not want to build a building that does not meet his business needs. The other variance that is significant to him was not to have the five-foot yard planted at the corner.

Mr. Tucker stated when he met with Mr. Estes he told Mr. Estes that the property was in the Overlay Zone and they would need to deal with berming/screening because the Ordinance was set up to screen the vehicles and the architectural changes. Mr. Estes said the most important thing was not to screen the vehicles. If he had to screen the vehicles, he could not build this product. He would have to stay in his existing facility because his entire business was drive-by. If they screen the vehicles, they will lose the drive-by. The second important thing was the branding. If the inventory and product were covered, he would not sell any more vehicles than out of his existing location.

Mrs. Solada stated that would be Docket Nos. 06090020-06090022 landscaping. The north bufferyard is the area that cannot be planted because of the utility easement. The south bufferyard was the most relevant because they do not want the five-foot planting area at the intersection. It does increase to 15 feet going to the west.

Mr. Tucker stated when they met with Scott Brewer, they came to an agreement about salvaging some of the trees, new ones they would be planting and the foundation plants they would clump together. Opposed to having a continuous screen, they were grouping the plants to allow views of the vehicles. He pointed out an area with additional plantings and others on the side. He thought they had left the meeting with Scott with a reasonable compromise that worked from the planting standpoint and the business standpoint allowing the vehicles to be seen.

Mr. Dierckman asked about the extra landscaping. He did not want Scott to not realize that they had agreed to put additional landscaping here in public areas.

Mr. Tucker showed the site plan. They will have additional plantings and it will not lessen the landscape plan. He indicated the places where the trees would be clumped along Michigan Road. They pushed as many plants as possible along the Midwest Scuba area. Any extra that they could not accommodate would be committed to the Parks Department. They just cannot physically plant the number of trees and foundation plants in the available area.

Mrs. Solada stated the variances that were the most critical were Docket Nos. 06090020 for the north bufferyard, 06090021 for the south bufferyard and 06090022 for perimeter parking lot plantings.

Mr. Dierckman stated they needed to validate the variances. It did not matter whether they were critical to them or not. There are statutory requirements for a variance. Either they were legitimate and valid and could be substantiated or they were not. He personally felt they could, but he did not really care which were the most important to them. He was not negotiating.

Mrs. Solada was not trying to negotiate, but trying to explain what they saw in writing and relate that to the visuals.

Mr. Hawkins stated his question was more the location of the plantings and the variances for them.

Mrs. Solada asked if the Department was opposed to the north bufferyard variance.

Mrs. Conn stated the Department was opposed to all the variances after 06090015, because they did not meet the landscape standards overall.

Mr. Dierckman moved to approve **Docket Nos. 06090013V-06090023V, Bill Estes Pre-Owned Facility.** The motion was seconded by Mrs. Torres. **Vote results:**

06090013V parking lot pole light height	3-1	Mrs. Torres negative vote
06090014V foot-candles at property line	3-1	Mrs. Torres negative vote
06090015V total number signs	4-0	
06090016V façade projections/recessions	3-1	Mr. Hawkins negative vote
06090017V building material EIFS	3-1	Mr. Hawkins negative vote
06090018V windows-design	3-1	Mr. Hawkins negative vote
06090019V windows-percent of façade	3-1	Mr. Hawkins negative vote

06090020V north bufferyard reduction	2-2	Mr. Hawkins & Mr. Broach negative vote
06090021V south bufferyard reduction	1-3	Mr. Hawkins, Mr. Broach & Mrs. Torres negative vote
06090022V perimeter parking lot plants	1-3	Mr. Hawkins, Mr. Broach & Mrs. Torres negative vote
06090023V screened parking within front/side yard	2-2	Mr. Hawkins & Mr. Broach negative vote

Mr. Molitor stated that with tie votes on two of the dockets, according to the rules, they would be re-scheduled to be heard next month. He recommended the Board delegate to him and the Staff the responsibility to draft the Findings of Fact for the denials.

The Board concurred.

I. Old Business

There was no Old Business.

J. New Business

There was no New Business.

K. Adjournment

Mr. Dierckman moved to adjourn. The motion was seconded by Mr. Hawkins and **APPROVED 4-0**. The meeting adjourned at 8:45 PM.

James R. Hawkins, Hearing Officer

Connie Tingley, Secretary